

Environmental Protection Agency

§ 35.915

State	Amount
Tr. Terr. of Pac. Islids	35,192
N. Mariana Islids	3,480
Total	23,902,130

[45 FR 83497, Dec. 19, 1980. Correctly designated at 46 FR 9947, Jan. 30, 1981]

§ 35.912 Delegation to State agencies.

EPA's policy is to maximize the use of staff capabilities of State agencies. Therefore, in the implementation of the construction grant program, optimum use will be made of available State and Federal resources. This will eliminate unnecessary duplicative reviews of documents required in the processing of construction grant awards. Accordingly, the Regional Administrator may enter into a written agreement, where appropriate, with a State agency to authorize the State agency's certification of the technical or administrative adequacy of specifically required documents. The agreement may provide for the review and certification of elements of:

- (a) Facilities plans (step 1),
- (b) plans and specifications (step 2),
- (c) operation and maintenance manuals, and
- (d) such other elements as the Regional Administrator determines may be appropriately delegated as the program permits and State competence allows. The agreement will define requirements which the State will be expected to fulfill as part of its general responsibilities for the conduct of an effective preaward applicant assistance program; compensation for this program is the responsibility of the State. The agreement will also define specific duties regarding the review of identified documents prerequisite to the receipt of grant awards. A certification agreement must provide that an applicant or grantee may request review by the Regional Administrator of an adverse recommendation by a State agency. Delegation activities are compensable by EPA only under section 106 of the Act or subpart F of this part.

§ 35.915 State priority system and project priority list.

Construction grants will be awarded from allotments according to the State

priority list, based on the approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act.

(a) *State priority system.* The State priority system describes the methodology used to rate and rank projects that are considered eligible for assistance. It also sets forth the administrative, management, and public participation procedures required to develop and revise the State project priority list. In developing its annual priority list, the State must consider the construction grant needs and priorities set forth in certified and approved State and areawide water quality management (WQM) plans. The State shall hold a public hearing before submission of the priority system (or revision thereto). Before the hearing, a fact sheet describing the proposed system (including rating and ranking criteria) shall be distributed to the public. A summary of State responses to public comment and to any public hearing testimony shall be prepared and included in the priority system submission. The Regional Administrator shall review and approve the State priority system for procedural completeness, insuring that it is designed to obtain compliance with the enforceable requirements of the Act as defined in § 35.905. The Regional Administrator may exempt grants for training facilities under section 109(b)(1) of the Act and § 35.930-1(b) from these requirements.

(1) *Project rating criteria.* (i) The State priority system shall be based on the following criteria:

- (A) The severity of the pollution problem;
- (B) The existing population affected;
- (C) The need for preservation of high quality waters; and
- (D) At the State's option, the specific category of need that is addressed.

(ii) The State will have sole authority to determine the priority for each category of need. These categories comprise mutually exclusive classes of facilities and include:

- (A) Category I—Secondary treatment;

(B) Category II—More stringent treatment;

(C) Category IIIA—Infiltration/inflow correction;

(D) Category IIIB—Sewer system replacement or major rehabilitation;

(E) Category IVA—New collectors and appurtenances;

(F) Category IVB—New interceptors and appurtenances; and

(G) Category V—Correction of combined sewer overflows.

(iii) Step 2, step 3 and step 2=3 projects utilizing processes and techniques meeting the innovative and alternative guidelines in appendix E of this part may receive higher priority. Also 100 percent grants for projects that modify or replace malfunctioning treatment works constructed with an 85 percent grant may receive a higher priority.

(iv) Other criteria, consistent with these, may be considered (including the special needs of small and rural communities). The State shall not consider: The project area's development needs not related to pollution abatement; the geographical region within the State; or future population growth projections.

(2) *Criteria assessment.* The State shall have authority to determine the relative influence of the rating criteria used for assigning project priority. The criteria must be clearly delineated in the approved State priority system and applied consistently to all projects. A project on the priority list shall generally retain its priority rating until an award is made.

(b) *State needs inventory.* The State shall maintain a listing, including costs by category, of all needed treatment works. The most recent needs inventory, prepared in accordance with section 516(b)(1)(B) of the Act, should be used for this purpose. This State listing should be the same as the needs inventory and fulfills similar requirements in the State WQM planning process. The State project priority list shall be consistent with the needs inventory.

(c) *State project priority list.* The State shall prepare and submit annually a ranked priority listing of projects for which Federal assistance is expected during the 5-year planning period

starting at the beginning of the next fiscal year. The list's fundable portion shall include those projects planned for award during the first year of the 5-year period (hereinafter called the funding year). The fundable portion shall not exceed the total funds expected to be available during the year less all applicable reserves provided in § 35.915-1 (a) through (d). The list's planning portion shall include all projects outside the fundable portion that may, under anticipated allotment levels, receive funding during the 5-year period. The Administrator shall provide annual guidance to the States outlining the funding assumptions and other criteria useful in developing the 5-year priority list.

(1) *Project priority list development.* The development of the project priority list shall be consistent with the rating criteria established in the approved priority system, in accordance with the criteria in paragraph (a)(1) of this section. In ranking projects, States must also consider the treatment works and step sequence; the allotment deadline; total funds available; and other management criteria in the approved State priority system. In developing its annual priority list, the State must consider the construction grant needs and priorities set forth in certified and approved State and areawide WQM plans. The Regional Administrator may request that a State provide justification for the rating or ranking established for specific project(s).

(2) *Project priority list information.* The project priority list shall include the information for each project that is set out below for projects on the fundable portion of the list. The Administrator shall issue specific guidance on these information requirements for the planning portion of the list, including phase-in procedures for the fiscal year 1979 priority planning process.

(i) State assigned EPA project number;

(ii) Legal name and address of applicant;

(iii) Short project name or description;

(iv) Priority rating and rank of each project, based on the approved priority system;

(v) Project step number (step 1, 2, 3, or 2=3);

(vi) Relevant needs authority/facility number(s);

(vii) NPDES number (as appropriate);

(viii) Parent project number (i.e., EPA project number for predecessor project);

(ix) For step 2, 3, or 2=3 projects, indication of alternative system for small community;

(x) For step 2, 3, or 2=3 projects, that portion (if any) of eligible cost to apply to alternative techniques;

(xi) For step 2, 3, or 2=3 projects, that portion (if any) of eligible cost to apply to innovative processes;

(xii) For step 3 or 2=3 projects, the eligible costs in categories IIIB, IV, and V (see § 35.915(a)(1)(ii));

(xiii) Total eligible cost;

(xiv) Date project is expected to be certified by State to EPA for funding;

(xv) Estimated EPA assistance (not including potential grant increase from the reserve in § 35.915-1(b)); and

(xvi) Indication that the project does or does not satisfy the enforceable requirements provision, including (as appropriate) funding estimates for those portions which do not meet the enforceable requirements of the Act.

(d) *Public participation.* Before the State submits its annual project priority list to the Regional Administrator, the State shall insure that adequate public participation (including a public hearing) has taken place as required by subpart G of this part. Before the public hearing, the State shall circulate information about the priority list including a description of each proposed project and a statement concerning whether or not it is necessary to meet the enforceable requirements of the Act. The information on the proposed priority list under paragraph (c)(2) of this section may be used to fulfill these requirements. This public hearing may be conducted jointly with any regular public meeting of the State agency. The public must receive adequate and timely statewide notice of the meeting (including publication of the proposed priority list) and attendees at the meeting must receive adequate opportunity to express their views concerning the list. Any revision of the State priority list (including

project bypass and the deletion or addition of projects) requires circulation for public comment and a public hearing unless the State agency and the Regional Administrator determine that the revision is not significant. The approved State priority system shall describe the public participation policy and procedures applicable to any proposed revision to the priority list.

(e) *Submission and review of project priority list.* The State shall submit the priority list as part of the annual State program plan under subpart G of this part. A summary of State agency response to public comment and hearing testimony shall be prepared and submitted with the priority list. The Regional Administrator will not consider a priority list to be final until the public participation requirements are met and all information required for each project has been received. The Regional Administrator will review the final priority list within 30 days to insure compliance with the approved State priority system. No project may be funded until this review is complete.

(f) *Revision of the project priority list.* The State may modify the project priority list at any time during the program planning cycle in accordance with the public participation requirements and the procedures established in the approved State priority system. Any modification (other than clerical) to the priority list must be clearly documented and promptly reported to the Regional Administrator. As a minimum, each State's priority list management procedure must provide for the following conditions:

(1) *Project bypass.* A State may bypass a project on the fundable portion of the list after it gives written notice to the municipality and the NPDES authority that the State has determined that the project to be bypassed will not be ready to proceed during the funding year. Bypassed projects shall retain their relative priority rating for consideration in the future year allotments. The highest ranked projects on the planning portion of the list will replace bypassed projects. Projects considered for funding in accordance with this provision must comply with paragraph (g) of this section.

(2) *Additional allotments.* If a State receives any additional allotment(s), it may fund projects on the planning portion of the priority list without further public participation if:

(i) The projects on the planning portion have met all administrative and public participation requirements outlined in the approved State priority system; and

(ii) The projects included within the fundable range are the highest priority projects on the planning portion.

If sufficient projects that meet these conditions are not available on the planning portion of the list, the State shall follow the procedures outlined in paragraph (e) of this section to add projects to the fundable portion of the priority list.

(3) *Project removal.* A State may remove a project from the priority list only if:

(i) The project has been fully funded;

(ii) The project is no longer entitled to funding under the approved priority system;

(iii) The Regional Administrator has determined that the project is not needed to comply with the enforceable requirements of the Act; or

(iv) The project is otherwise ineligible.

(g) *Regional Administrator review for compliance with the enforceable requirements of the Act.* (1) Unless otherwise provided in paragraph (g)(2) of this section, the Regional Administrator may propose the removal of a specific project or portion thereof from the State project priority list during or after the initial review where there is reason to believe that it will not result in compliance with the enforceable requirements of the Act. Before making a final determination, the Regional Administrator will initiate a public hearing on this issue. Questioned projects shall not be funded during this administrative process. Consideration of grant award will continue for those projects not at issue in accordance with all other requirements of this section.

(i) The Regional Administrator shall establish the procedures for the public notice and conduct of any such hearing, or, as appropriate, the procedures may be adapted from existing agency

procedures such as § 6.400 or §§ 123.32 and 123.34 of this chapter. The procedures used must conform to minimum Agency guidelines for public hearings under part 25 of this chapter.

(ii) Within 30 days after the date of the hearing, the Regional Administrator shall transmit to the appropriate State agency a written determination about the questioned projects. If the Regional Administrator determines that the project will not result in compliance with the enforceable requirements of the Act, the State shall remove the project from the priority list and modify the priority list to reflect this action. The Regional Administrator's determination will constitute the final agency action, unless the State or municipality files a notice of appeal under part 30, subpart J of this subchapter.

(2) The State may use 25 percent of its funds during each fiscal year for projects or portions of projects in categories IIIB, IVA, IVB, and V (see § 35.915(a)(1)(ii)). These projects must be eligible for Federal funding to be included on the priority list. EPA will generally not review these projects under paragraph (g)(1) of this section to determine if they will result in compliance with the enforceable requirements of the Act. The Regional Administrator will, however, review all projects or portions thereof which would use funds beyond the 25-percent level according to the criteria in paragraph (g)(1) of this section.

(h) *Regional Administrator review for eligibility.* If the Regional Administrator determines that a project on the priority list is not eligible for assistance under this subpart, the State and municipality will be promptly advised and the State will be required to modify its priority list accordingly. Elimination of any project from the priority list shall be final and conclusive unless the State or municipality files a notice of appeal under part 30, subpart J of this subchapter.

[43 FR 44049, Sept. 27, 1978, as amended at 44 FR 37595, June 27, 1979; 44 FR 39339, July 5, 1979]